

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 6819	DATE	1/16/2001
CASE TITLE	Joseph F. Monahan, etc. vs. NCO Financial Systems, Inc.		



[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Order. Monahan's motion for class certification is denied for the present. (9-1) This action is set for a status hearing on January 26, 2001 at 9:00 a.m.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials 	 	number of notices	Document Number
			JAN 17 2001 <small>date docketed</small>	
			 <small>docketing deputy initials</small>	
			1/16/2001 <small>date mailed notice</small>	
			SN	
SN			mailing deputy initials	

Date/time received in central Clerk's Office

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH F. MONAHAN, etc.,)
)
 Plaintiff,)
)
 v.) No. 00 C 6819
)
NCO FINANCIAL SYSTEMS, INC.,)
)
 Defendant.)

FORWARDED
JAN 17 2001

MEMORANDUM OPINION AND ORDER

Joseph Monahan ("Monahan") has filed a Motion and Memorandum in Support of Class Certification, seeking a determination under Fed. R. Civ. P. ("Rule") 23 that this action brought by him under the Fair Debt Collection Practices Act ("Act") should be maintained as a class action. In turn NCO Financial Systems, Inc. ("NCO") has filed its objections to that motion, rendering it ripe for resolution. For the reasons briefly stated in this memorandum opinion and order, Monahan's motion is denied.

Rule 23(c)(1) directs that a class certification determination¹ should be made "[a]s soon as practicable after the commencement of an action brought as a class action." But in this instance it is painfully apparent that it is not now

¹ In accordance with universal practice, this opinion employs "certification" as the shorthand term for Rule 23's more precise language that speaks of whether an "action may be maintained as a class action" (Rule 23(b) and 23(c)(1)). In the same way, the customary shorthand terminology of "numerosity," "commonality," "typicality" and "adequacy of representation" will be used here to denote the four criteria that are specified in Rule 23(a) as preconditions for certification.

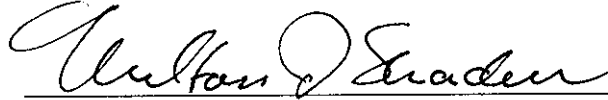
"practicable" to give an affirmative answer to that question: When one cuts through the welter of cases that have been cited by Monahan's counsel to focus instead on the real issues, what emerges is the undeniable conclusion that counsel has offered up nothing more than speculation and mere ipse dixits in place of the factual background that is necessary to determine whether three of the four Rule 23(a) factors--numerosity, commonality and typicality--have or have not been satisfied. In light of the nature of the communications that have been charged by Monahan as violative of the Act, this Court cannot accept his counsel's conclusory assertions (or take some sort of proposed judicial notice) as a substitute for the essential factual showing.

Accordingly, for the reasons that have been persuasively set out in NCO's Objections to Plaintiff's Motion for Class Certification, Monahan's motion for class certification is denied for the present. It should of course be understood that this ruling is not at all equivalent to a holding that class certification is not a possibility at some future time, based on an appropriate showing. What is clear instead is that no adequate showing on that score has now been made.

As discussed at the recent status hearing in this matter, it is appropriate to hold another status hearing shortly (after counsel for the litigants have had the opportunity to consider the effect of this ruling on the future conduct of the

litigation). That new status hearing is set for 9 a.m.

January 26, 2001.

A handwritten signature in cursive script, reading "Milton I. Shadur", written over a horizontal line.

Milton I. Shadur
Senior United States District Judge

Date: January 16, 2001